

Pt. 1956

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the property and as equitable servitude subject to release by the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) when/if no longer applicable:

(INSERT RESTRICTIONS)

The FmHA or its successor agency under Public Law 103–354 will increase the number of acres placed under easement, if requested in writing, provided that the request is supported by a technical recommendation of the U.S. Fish and Wildlife Service. Where additional acreage is accepted by FmHA or its successor agency under Public Law 103–354 for conservation easement, the purchase price of the inventory farm will be adjusted accordingly.

(County Supervisor, District Director or Real Estate Broker)

ACKNOWLEDGEMENT _____

DATE: _____

I hereby acknowledge receipt of the notice that the above stated real property is in a (special flood) (mudslide hazard) (wetland)* area and is subject to use restrictions as above cited. [Also, if I purchase the property through a credit sale, I agree to insure the property against loss from (floods) (mudslide)* in accordance with requirements of the FmHA or its successor agency under Public Law 103–354.]

(Prospective Purchaser)

*Delete the hazard that does not apply.

[57 FR 31644, July 17, 1992]

PART 1956—DEBT SETTLEMENT

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

SOURCE: 51 FR 45434, Dec. 18, 1986, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

SOURCE: 56 FR 10147, Mar. 11, 1991, unless otherwise noted.

§ 1956.51 Purpose.

This subpart delegates authority and prescribes policy and procedures for

settlement of debts owed to the United States under the Farm Credit loan programs of the Farm Service Agency (FSA) and the Multi-Family Housing (MFH) program of the Rural Housing Service (RHS). It also applies to Non-program (NP) loans secured by MFH property of the RHS. Settlement of claims against recipients of grant funds for reasons such as the use of funds for improper purposes is also covered by this subpart. Settlement of claims against third party converters, and Economic Opportunity (EO) loans is authorized under the Federal Claims Collection Standards, 4 CFR parts 101–105. This subpart does not apply to RHS direct Single Family Housing (SFH) loans, RHS NP loans secured by SFH property, or to the Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing programs.

[61 FR 59779, Nov. 22, 1996, as amended at 69 FR 69106, Nov. 26, 2004]

§§ 1956.52–1956.53 [Reserved]

§ 1956.54 Definitions.

Adjustment. The reduction of a debt or claim conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement(s) have been made.

Amount of debt. The outstanding balance of the amount loaned including principal and interest plus any outstanding advances, including interest, and subsidy to be recaptured made by the Government on behalf of the borrower.

Cancellation. The final discharge of a debt without any payment on it.

Chargeoff. The writing off of a debt and termination of collection activity without release of personal liability.

Compromise. The satisfaction of a debt or claim by the acceptance of a lump-sum payment of less than the total amount owed on the debt or claim.

Debt forgiveness. For the purposes of servicing Farm Loan Programs loans, debt forgiveness is defined as a reduction or termination of a direct FLP

loan in a manner that results in a loss to the Government. Included, but not limited to, are losses from a writedown or writeoff under 7 CFR part 766, debt settlement, after discharge under the provisions of the bankruptcy code, and associated with release of liability. Debt cancellation through conservation easements or contracts is not considered debt forgiveness for loan servicing purposes.

Debtor. The borrower of funds under any of the FmHA or its successor agency under Public Law 103–354 programs. This includes co-signors, guarantors and persons or entities that initially obtained or assumed a loan. Debtor also includes grant recipients.

Farm Loan Programs (FLP) loans. Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Special Livestock (SL), Softwood Timber (ST) loans, and/or Rural Housing Loans for farm services buildings (RHF).

Housing programs. All programs and claims arising under programs administered by FmHA or its successor agency under Public Law 103–354 under title V of the Housing Act of 1949.

Servicing office. The FmHA or its successor agency under Public Law 103–354 office that is responsible for the account.

Settlement. The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA or its successor agency under Public Law 103–354. The term “Settlement” is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

United States Attorney. An attorney for the United States Department of Justice.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21344, Apr. 21, 1993; 62 FR 10157, Mar. 5, 1997; 72 FR 64123, Nov. 15, 2007]

§§ 1956.55–1956.56 [Reserved]

§ 1956.57 General provisions.

(a) *Application of policies.* All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA or its successor agency under Public Law 103–354

personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart, and will not substitute individual feelings or sympathies in connection with any settlement.

(b) *Information needed for debt settlement.* A debtor requesting debt settlement must submit complete and accurate information from which a full determination of his/her financial condition can be made. This should include, where applicable, but is not limited to, obtaining verification of employment, providing expense verification, verifying farm program benefits (e.g., Farm Service Agency/Commodity Credit Corporation payments), and examining county records to determine what other assets the debtor has or recently disposed of. When a FLP debtor is continuing to farm, a farm operating plan must be obtained. Also, where a spouse is not a co-debtor the spouse's income will be considered in meeting family living expenses. If it appears that a debtor will not be able to pay in full and the indebtedness is eligible for settlement under this subpart, action should be taken, if possible, to avoid unnecessary litigation to enforce collection. If the debt is eligible for settlement, the debt settlement authorities of FmHA or its successor agency under Public Law 103-354 should be explained and the privileges thereof extended to the debtor. The information obtained from the debtor should be documented on a debt settlement form.

(c) *Negotiating a settlement.* County Supervisors may approve or reject compromises, adjustments, cancellations, or chargeoffs of SFH debts (to include recapture receivables), regardless of the amount. District Directors and County Supervisors cannot approve other debt settlement actions; therefore, other than SFH debt settlements, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. In negotiating a settlement, all of the factors which are pertinent to determining ability to pay will be discussed to assist the debtor in arriving at the proper type and terms of a settlement. The present and future repayment abil-

ity of a debtor, the factors mentioned in this subpart, and any other pertinent information will be the basis of determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to forecast accurately the debtor's future repayment ability over a long period of time; consequently, the period of time during which payments on settlement offers are to be made should not exceed five years. Debtors have the right to make voluntary settlement offers in any amount should they elect to do so. Adjustment offers will not be approved in any case unless there is reasonable assurance that the debtor will be able to make the payments as they become due.

(d) *Disposition of property.* Security may be retained by the debtor only under the conditions specified in §1956.66 of this subpart.

(e) *Proceeds from the disposal of security prior to approval of a debt settlement offer.* A debtor is not required to have disposed of the security prior to application for debt settlement for a loan to be settled. However, if a debtor has disposed of security prior to applying for debt settlement, proceeds from the disposed security must first be applied on the debtor's account, irrespective of an application for debt settlement unless the conditions specified in §1956.66 of this subpart are met.

(f) [Reserved]

(g) *Settlement when legal or investigative action has been taken, recommended, or is contemplated.* (1) Debts cannot be settled:

(i) If the matter has been referred either to the Office of the Inspector General (OIG) under §1962.49(a) of subpart A of part 1962 of this chapter or to Office of the General Counsel (OGC) because of suspected criminal violation, or criminal prosecution is pending because of an illegal act(s) committed by the debtor in connection with the debt or the security for that debt, the procedure outlined in paragraph (g)(3) of this section will be followed, unless, the OIG has declined to investigate the matter or, OGC has advised otherwise, or the case is in the hands of the United States Attorney.

(ii) If a request for referral to the United States Attorney to institute a civil action to protect the interest of the Government has been made by FmHA or its successor agency under Public Law 103-354.

(iii) Except as provided in paragraph (g)(3) of this section, if the case has been referred to the United States Attorney and is not closed.

(2) If a debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested, the account will not be approved for settlement.

(3) When a claim has been referred to, or a judgment has been obtained by the United States Attorney, and the debtor requests settlement, the employee in charge of the account will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, that FmHA or its successor agency under Public Law 103-354 has no authority to agree to a settlement offer when the United States Attorney's file is not closed, and that if the debtor wishes to make a compromise or adjustment offer when the United States Attorney's file is not closed, it will be submitted with any related payment directly to the United States Attorney for a decision on the settlement offer.

(h) *Advice from OGC.* State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

(i) *Settlement of claims against estates.* Settlement of a claim against an estate under the provisions of this subpart will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(j) *Joint debtors.* Settlement may not be approved for one joint debtor unless approved for all debtors. "Joint debtors" includes all parties (individuals, partnerships, joint operators, coopera-

tives, corporations, estates) who are legally liable for payment of the debt.

(1) Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(2) A separate Form FmHA or its successor agency under Public Law 103-354 1956-1 will be completed by each debtor, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or has received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable to obtain the signature of the other debtor(s), Form FmHA or its successor agency under Public Law 103-354 1956-1 or Form FmHA or its successor agency under Public Law 103-354 1956-2 (for housing loans) "Cancellation or Charge-off of FmHA or its successor agency under Public Law 103-354 Indebtedness," will be prepared by showing at the top of the form the name of the debtor requesting settlement, following by the name of the other debtor.

For example, "John Doe, joint debtor with Bill Doe, deceased," "John Doe, joint debtor with Sam Doe, discharged in bankruptcy," "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature," as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form FmHA or its successor agency under Public Law 103-354 1956-1, or 1956-2 for housing loans.

(k) *Settlement where debtor owes more than one type of Agency loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on

another agency loan and who will continue as an active borrower. In such case, the facts will be fully documented in part VIII of Form RD 1956–1.

(1) *No previous debt forgiveness.* Debt settlement may not be approved for any direct Farm Loan Programs loan if the borrower has received debt forgiveness on any other direct loan as defined in § 1956.54 of this subpart.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21344, Apr. 21, 1993; 62 FR 10157, Mar. 5, 1997; 68 FR 7700, Feb. 18, 2003]

§§ 1956.58–1956.65 [Reserved]

§ 1956.66 Compromise and adjustment of nonjudgment debts.

Nonjudgment debts which the debtor is unable to pay may be compromised or adjusted in accordance with applicable provisions of this section, and the debtor may retain the security property, if any. Application will be made on Form RD 1956–1 by the debtor; or if the debtor is unable to act, by another party having legal authority to act for the debtor. Collection of a lump sum offer may be deferred until the debtor is advised that the offer is approved. Upon full payment of the approved compromise or adjustment amount, the Agency will release the debtor from liability by delivering the note(s) to the debtor stamped “Satisfied by compromise or adjustment.”

(a) *FLP debts.* The debt or any extension thereof on which compromise or adjustment is requested does not have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Nonjudgment secured FLP debts may be compromised or adjusted in accordance with the following conditions:

(1) Security may be retained by the debtor if the debtor offers an amount at least equal to the current fair market value (including any crop security) less any prior lien amounts. Any remaining unsecured debt may be debt settled.

(2) Where the debtor is able to pay an amount in excess of the lump sum compromise offer, an adjustment offer must call for a lump sum payment as set out in paragraph (a)(1) of this section, plus any additional amounts the

Agency determines the debtor is able to pay over a period of time not to exceed 5 years.

(3) The acceptability of a compromise or adjustment offer will be arrived at by determining and evaluating:

(i) Statement of indebtedness owed on any prior liens. Statements will be retained in the debtor’s file.

(ii) Value of existing security as determined by a current appraisal made or obtained by the Agency. The appraisal will be retained in the debtor’s file.

(iii) Debtor’s total present income and probable sources, amount and stability of income over the next 5 years. Old age pensions, other public assistance, and veteran’s disability pensions will not be considered as sources of funds for making compromise and adjustment offers.

(iv) Amount of debtor’s other debts.

(v) Amount of debtor’s essential family living expenses, and farm or business operation expenses necessary to continue the operation, if applicable.

(vi) Age and health when the debtor is largely depending on income from an occupation where manual labor is required.

(vii) Size of debtor’s family, their ages and health.

(viii) Value of debtor’s assets in relation to debts and liens of third parties. Reasonable equity in a modest nonsecurity homestead occupied by the debtor will not be considered as available for settlement. Nonsecurity property in excess of minimum family living needs which is not exempt from levy and execution should be considered in determining the debtor’s ability to pay.

(b) *Housing debts (both Single-family and Multi-family).* Nonjudgment secured debts may be compromised or adjusted as follows:

(1) The debt is fully matured under the terms of the note or other instrument; or has been accelerated by written notice prior to the date of the settlement application.

(2) A compromise offer must at least equal the value of the security as determined by FmHA or its successor agency under Public Law 103–354 (less any prior liens) plus any additional amount FmHA or its successor agency

under Public Law 103-354 determines the debtor is able to pay based on a current financial statement.

(3) An adjustment offer must meet the requirements of paragraph (b)(2) of this section, except the debt (or the amount offered) is to be scheduled for payment over the shortest period FmHA or its successor agency under Public Law 103-354 determines is feasible based on the debtor's financial resources, but not to exceed 5 years.

(c) *Unsecured debts.* Unsecured debts considered under this paragraph (c) are most frequently account balances remaining after the debtor has sold security property to another party/entity, the security has been liquidated through foreclosure, or FmHA or its successor agency under Public Law 103-354 has accepted a deed in lieu of foreclosure and the borrower was not released from liability. An offer to compromise or adjust an unsecured debt must represent the maximum amount FmHA or its successor agency under Public Law 103-354 determines the debtor can pay based on a current financial statement and other information available to FmHA or its successor agency under Public Law 103-354. An adjustment offer is to be scheduled for payment over the shortest period FmHA or its successor agency under Public Law 103-354 determines is feasible, but not to exceed 5 years.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21345, Apr. 21, 1993; 62 FR 10157, Mar. 5, 1997]

§ 1956.67 Debts which the debtor is able to pay in full but refuses to do so.

Debts which the debtor may have the ability to pay in full but has refused to do so may be compromised or adjusted in the following situations on Form FmHA or its successor agency under Public Law 103-354 1956-1:

(a) When the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, the debt may be compromised. In determining inability to collect, the following factors will be considered:

(1) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(2) Inheritance prospects within 5 years.

(3) Likelihood of debtor obtaining nonexempt property or income within 5 years, out of which there could be collected a substantially larger sum than the amount of the present offer.

(4) Uncertainty as to price the security or other property will bring at forced sale.

(b) The debt may be compromised or adjusted when the OGC has advised in writing that:

(1) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(2) The amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved.

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors.

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation.

(c) When the cost of collecting the debt does not justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigation costs of collection. Such discount will not exceed \$2,000 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§ 1956.68 Compromise or adjustment without debtor's signature.

Debts of a living debtor may be compromised or adjusted if it is impossible or impracticable to obtain a signed application and all other requirements of this section applicable to compromise or adjustment with a signed application have been met. Form FmHA or its successor agency under Public Law 103-354 1956-1 will show:

§ 1956.69

(a) The sources from which the information was obtained.

(b) That a current effort was made to obtain the debtor's signature and the date(s) of such effort.

(c) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§ 1956.69 [Reserved]

§ 1956.70 Cancellation.

Nonjudgment debts may be canceled in the following instances:

(a) *With application.* The debt or any extension thereof on Farmer Programs debts *do not* have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Debts due the FmHA or its successor agency under Public Law 103-354 may be canceled upon application of the debtor, or if a debtor is unable to act, upon application of a guardian, executor, or administrator, subject to the following conditions:

(1) The FmHA or its successor agency under Public Law 103-354 employee in charge of the account furnishes a report and favorable recommendation concerning the cancellation.

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected.

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

(b) *Without application.* Debts due the FmHA or its successor agency under Public Law 103-354 may be canceled upon a report and the favorable recommendation of the employee in charge of the account in the following instances:

(1) *Deceased debtors.* The following conditions must exist:

(i) There is no known security; and

(ii) An administrator or executor has not been appointed to settle the debtor's estate and the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery; or

(iii) An administrator or executor has been appointed to settle the estate of the debtor; and

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(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been affected but such assets have been disposed of or lost in a manner which OGC advises will preclude any reasonable prospect of recovery by the Government.

(2) *Disappeared debtors.* The debt may be canceled without application where the debtor has no known assets or future debt-paying ability, has disappeared and cannot be found without undue expense, and there is no existing security for the debt. Reasonable efforts will be made to locate the debtor. These efforts will generally include contacts, either in person or in writing, with postmasters, motor vehicle licensing and title authorities, telephone directories, city directories, utility companies, State and local governmental agencies, other Federal agencies, employees, friends, and credit agency skip locate reports, known relatives, neighbors and County Committee members. Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating the debtor. The efforts made to locate the debtor, including the names and dates of contacts, and the information furnished by each person, will be fully documented in the appropriate space on Form FmHA or its successor agency under Public Law 103-354 1956-1 or Form FmHA or its successor agency under Public Law 103-354 1956-2 for housing loans.

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by use of the appropriate Agency form with the attachments noted below. No attempt will be made to obtain the debtor's signature. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of

the debt in accordance with advice from OGC, the debt is not discharged.

(i) Chapter 7 Bankruptcy cases will be documented with a copy of the “Discharge of Debtor” order(s) by the court for all obligors.

(ii) For debts identified as being part of an unsecured claim under Chapter 11, the cancellation will be documented with a copy of the organization plan, copy of the order by the court confirming the plan, a copy of the order completing the plan (a similar order), and an opinion by OGC that the confirming order has discharged the obligor(s) of liability to that part of the debt.

(iii) For debts identified as being part of an unsecured claim under chapters 12 or 13, the cancellation will be documented with a copy of the reorganization plan and confirmation order, as above, a copy of the order completing the plan and closing the case, and an opinion by OGC that the completion order has discharged the obligor(s) of liability to that portion of the debt.

(c) *Signature of debtor cannot be obtained.* Debts of a living debtor may be canceled if it is impossible or impracticable to obtain a signed application and the requirements in paragraph (a) of this section concerning cancellation with application have been met or if the debt has been discharged in bankruptcy and there is no security. Form FmHA or its successor agency under Public Law 103-354 1956-1 will state:

(1) The sources of information obtained.

(2) That a current effort was made to obtain the debtor's application and the date of such effort.

(3) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

[56 FR 10147, Mar. 11, 1991, as amended at 68 FR 7700, Feb. 18, 2003]

§ 1956.71 Settling uncollectible recap- ture receivables.

The settlement of uncollectible recapture receivables will be fully documented on a debt settlement form and retained in the case file.

[58 FR 21345, Apr. 21, 1993]

§§ 1956.72–1956.74 [Reserved]

§ 1956.75 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.57(g)(3), judgment debts may be charged off by use of Form FmHA or its successor agency under Public Law 103-354 1956-1 or Form FmHA or its successor agency under Public Law 103-354 1956-2 for housing upon a report and favorable recommendation of the employee in charge of the account provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.70(b)(2) have been met, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off using Form FmHA or its successor agency under Public Law 103-354 1956-1 or Form FmHA or its successor agency under Public Law 103-354 1956-2 for housing loans without the debtor's signature subject to the following provisions:

(1) When the principal balance is \$2,000 or less and efforts to collect have been unsuccessful or it is apparent that further collection efforts would be ineffectual or uneconomical,

(2) When the OGC advises in writing that the claim is legally without merit.

(3) Even though FmHA or its successor agency under Public Law 103-354 considers the claim to be valid, when efforts to induce voluntary payments are unsuccessful and the OGC advises in writing that evidence necessary to prove the claim in court cannot be produced, or

(4) When the employee in charge of the account recommends the chargeoff and has made the following determinations on the basis of information in FmHA or its successor agency under Public Law 103-354's official files or from other informed reliable sources:

(i) That the debtor is:

(A) Unable to pay any part of the debt and has no apparent future debt repayment ability as specified in § 1956.66(a); or

(B) Able to pay part or all of the debt but is unwilling to do so, it is clear that the Government cannot enforce collection of a significant amount from assets or income, and an opinion is received from OGC to that effect; and

(ii) There is no security for the debt.

(c) For debts identified as being part of an unsecured claim under a confirmed Chapter 11 plan, the chargeoff will be documented with a copy of the organization plan, a copy of the court order confirming the plan, an opinion by OGC that the order confirming the plan has discharged the debtor(s) of liability on the unsecured part of the debt.

§§ 1956.76–1956.83 [Reserved]

§ 1956.84 Approval or rejection.

(a)–(d) [Reserved]

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected will be notified of appeal rights pursuant to 7 CFR part 11.

[58 FR 21345, Apr. 21, 1993, as amended at 68 FR 7700, Feb. 18, 2003]

§ 1956.85 Payments and receipts.

(a) *Servicing office handling.* (1) An application with which the debtor offers a lump-sum payment in compromise, or with which the debtor offers an initial payment on an adjustment offer, will be accompanied by the payments required at the time such application is filed in the servicing office.

(2) [Reserved]

(3) Checks or check transmittal letter containing restrictive notations such as “Settlement in full” or “Payment in full,” or in those exceptional instances when the debtor refuses to sign the Form FmHA or its successor agency under Public Law 103–354 1956–1 in connection with a compromise offer, will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(b) *Finance Office handling.* (1) All payments evidenced by Form FmHA or its successor agency under Public Law 103–354 451–2, “Schedule of Remittances,” bearing the legend “Compromise Offer—FmHA or its successor agency under Public Law 103–354” or

“Adjustment Offer—FmHA or its successor agency under Public Law 103–354,” will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds the Finance Office will prorate the amount received, on the basis of the total principal balance due the respective revolving funds. Upon notification of a rejection of a debtor’s offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(2) When a debtor’s adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA or its successor agency under Public Law 103–354 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer. The original Form FmHA or its successor agency under Public Law 103–354 1956–1 in approved cases will be retained in the Finance Office.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21345, Apr. 21, 1993; 68 FR 61332, Oct. 28, 2003; 69 FR 69106, Nov. 26, 2004]

§§ 1956.86–1956.95 [Reserved]

§ 1956.96 Delinquent adjustment agreements.

A 90-day extension for making the payments may be given by the Agency when the circumstances of the case justify an extension. A decision not to extend the time for making payments is not appealable. If the debtor is delinquent under the terms of the adjustment agreement and is likely to be financially unable to meet the terms of the agreement, the Agency may cancel the existing agreement and process a different type of settlement more consistent with the debtor’s repayment

ability, provided the facts in the case justify such action. The cancellation of an adjustment agreement is appealable. If an agreement is cancelled, any payments received shall be retained as payments on the debt owed at the time of the adjustment agreement.

[68 FR 7700, Feb. 18, 2003]

§ 1956.97 Disposition of promissory notes.

(a) Notes evidencing debts settled by completed adjustments, completed compromise with or without signature, or canceled with signature will be returned to the debtor or to the debtor's legal representative. The original and copies of notes will be stamped "Satisfied by Approved Compromise," "Satisfied by Approved Cancellation," or "Satisfied by Completed Adjustment Offer." In such cases, the security instrument(s) will be released of record according to State law.

(b) Notes evidencing debts canceled without application will be placed in the debtor's case folder and disposed of pursuant to FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office). However, if the debtor requests the notes, they may be stamped "Satisfied By Approved Cancellation" and returned.

(c) Notes evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after charged off pursuant to FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(d) In case of a transfer of security with assumption for less than the debt, the promissory note will be attached to the assumption agreement covered by the note and kept in the transferee's file.

[56 FR 10147, Mar. 11, 1991. Redesignated and amended at 58 FR 21346, Apr. 21, 1993]

§ 1956.98 [Reserved]

§ 1956.99 Exception authority.

The Administrator may, in individual cases, make an exception to any

requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse affect on the Government's interest, propose alternative courses of action, and show how the adverse affect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA or its successor agency under Public Law 103-354 1956-1 and returned to the State Office for submission to the Finance Office.

§ 1956.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0118. Public reporting burden for this collection of information is estimated to vary from 15 to 20 minutes per response, with an average of 20 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Subpart C—Debt Settlement—Community and Business Programs

SOURCE: 53 FR 13100, Apr. 21, 1988, unless otherwise noted.

§ 1956.101

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§ 1956.101 Purpose.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Community Facility loans; Association Recreation loans; Rural Renewal loans; direct Business and Industry loans; and Shift-in-land-use loans. Settlement of Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Non-program loans, Rural Business Enterprise/Television Demonstration Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants, is not authorized under independent statutory authority, and settlement under these programs is handled pursuant to the Federal Claims Collection Joint Standards, 4 CFR parts 101–105, as described in § 1956.147 of this subpart. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

[72 FR 55019, Sept. 28, 2007]

§ 1956.102 Application of policies.

(a) *General.* If a debt is eligible for settlement, the debt settlement authorities of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) should be explained and the privileges thereof extended to the debtor. All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA or its successor agency under Public Law 103–354 personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart.

(b) *For hospitals and health care facilities only.* Loan servicing and debt restructuring options according to § 1956.143 of this subpart must be exhausted before the other settlement authorities of this subpart are applicable.

[53 FR 13100, Apr. 21, 1988, as amended at 59 FR 46160, Sept. 7, 1994]

§§ 1956.103–1956.104 [Reserved]

§ 1956.105 Definitions.

(a) *Settlement.* The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA or its successor agency under Public Law 103–354. The term “settlement” is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(b) *Compromise.* The satisfaction of a debt, including a release of liability, by the acceptance of a lump-sum payment of less than the total amount owed on the debt.

(c) *Adjustment.* The satisfaction of a debt, including a release of liability, when acceptance is conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement have been made.

(d) *Cancellation.* The final discharge of a debt with a release of liability.

(e) *Chargeoff.* To write off a debt and terminate all servicing activity *without* a release of liability. This is not a final discharge of the debt, but rather a decision upon the part of the agency to remove the debt from agency receivables.

(f) *Debtor.* The borrower of loan funds under any of the FmHA or its successor agency under Public Law 103–354 programs specified in § 1956.101 of this subpart.

(g) *Security.* All that serves as collateral for the FmHA or its successor agency under Public Law 103–354 loan(s), including, but not limited to, revenues, tax levies, municipal bonds, and real and chattel property.

(h) *Servicing official.* The FmHA or its successor agency under Public Law 103–354 official who is primarily responsible for servicing the account.

(i) *United States Attorney.* An attorney for the United States Department of Justice.

(j) *Independent Qualified Fee Appraiser.* An individual who is a designated member of the American Institute of Real Estate Appraisers, Society

of Real Estate Appraisers, or an equivalent organization, requiring appraisal education, testing, and experience.

[53 FR 13100, Apr. 21, 1988, as amended at 54 FR 47510, Nov. 15, 1989; 66 FR 1569, Jan. 9, 2001]

§§ 1956.106–1956.108 [Reserved]

§ 1956.109 General requirements for debt settlement.

(a) *Debt due and payable.* The debt or any extension thereof on which settlement is requested must be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application for settlement, unless the debt is to be cancelled without application under § 1956.130(b) or charged off under § 1956.136 of this subpart.

(b) *Disposition of security.* Ordinarily, all security will be disposed of prior to the date of application for settlement. There are exceptions:

(1) It may be necessary to abandon security through the debt settlement process. For example, a community may be rendered uninhabitable by a toxic or hazardous substance. In such cases, debt settlement may proceed provided the servicing official determines:

(i) That further collection efforts with respect to the security in question would be ineffective or uneconomical,

(ii) That it is in the best interests of the Government to proceed with debt settlement,

(iii) That the proposal otherwise meets the requirements appropriate to the type of settlement under consideration, and

(iv) The approval of the Administrator is obtained.

(2) A servicing action may have been carried out which resulted in a less than complete disposition of security. For example, the Government may have consented to a voluntary sale of a debtor's real and chattel property without reference to other security, which might include, but is not limited to: an additional lien on revenue, a third party pledge of security, or a pledge of personal liability. In such cases, debt settlement may proceed

provided the requirements of § 1956.109(b)(1) of this subpart are met.

(3) Security can be retained under the compromise and adjustment offers as specified in § 1956.124 of this subpart.

(4) Settlement of a claim against an estate will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, dower and curtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(c) *Proceeds from the sale of security.* Proceeds from the sale of security must be applied on the debtor's account, taking into consideration the disposition requirements of any grant agreement, prior to the date of application for settlement, except when security is retained as provided for in § 1956.109(b) of this subpart. Debtors will not be allowed to sell security and use the proceeds as part or all of the debt settlement offer.

(d) *County Committee review.* Proposed settlement actions will be reviewed by the County Committee except for the cancellation of debts discharged in bankruptcy under § 1956.130(b)(1) of this subpart or when a claim has been referred to a United States Attorney under § 1956.112(d) of this subpart. No settlement shall be approved if it is more favorable to the debtor than recommended by the County Committee.

(e) *Assistance from Office of General Counsel (OGC).* When necessary, State Directors will obtain advice from OGC in handling proposed debt settlement actions.

(f) *Format.* Form FmHA or its successor agency under Public Law 103-354 1956-1, "Application for Settlement of Indebtedness," will be utilized for all settlement actions under this subpart.

§ 1956.110 Joint debtors.

Settlements may not be approved for one joint debtor unless approved for all debtors. Joint debtors includes all parties, individuals, and organizations, who are legally liable for payment of the debt.

§ 1956.111

(a) Individual settlement offers from joint debtors can be accepted and processed only as a joint offer. A separate Form FmHA or its successor agency under Public Law 103-354 1956-1 will be completed by each debtor unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application.

(b) If one of the joint debtors is deceased or has received a discharge of the debt in bankruptcy, or if the whereabouts of one of the debtors is unknown, or it is otherwise impossible or impractical to obtain the signature of the debtor, the application for settlement may be accepted without that debtor's signature if it contains adequate information on each of the debtors to justify settlement of the debt as to each of the debtors. The name of the debtor requesting settlement will be shown at the top of Form FmHA or its successor agency under Public Law 103-354 1956-1 followed by name and status of the other debtor. For example, "John Doe, joint debtor with Jane Doe, deceased."

(c) Joint debtors must be advised in writing that all debtors will remain liable for the balance of the debt until any payment(s) due under the joint offer have been made.

§ 1956.111 Debtors in bankruptcy.

FmHA or its successor agency under Public Law 103-354 personnel will process reorganization plans of debtors filing under Chapter 9, Chapter 11, or Chapter 13 as follows:

(a) Plans submitted by debtors under Chapters 9, 11, and 13 must be sent by the servicing official to the State Director who will recommend either acceptance or rejection of the plans and refer them to the United States Attorney through OGC. When the plan calls for the adjustment of a debt to FmHA or its successor agency under Public Law 103-354, the State Director will obtain the advice of the Administrator before providing OGC with a recommendation on acceptance or rejection of this plan.

(b) The United States Attorney will advise the State Director, through OGC, as to approval or rejection of the debtor's reorganization plan. The State

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Director will then notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan, including any adjustment of the debt.

§ 1956.112 Debts ineligible for settlement.

Debts will not be settled:

(a) If referral to the Office of Inspector General (OIG) and/or to the OGC is contemplated or pending because of suspected criminal violation, or

(b) If civil action to protect the interests of the Government is contemplated or pending, or

(c) If an investigation for suspected fiscal irregularity is contemplated or pending, or

(d) When a claim has been referred to or a judgment has been obtained by the United States Attorney and the debtor requests settlement, the servicing official will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, and therefore, FmHA or its successor agency under Public Law 103-354 has no authority to agree to a settlement offer. If the debtor wishes to make a settlement offer, it must be submitted with any related payment directly to the United States Attorney for consideration.

§§ 1956.113-1956.117 [Reserved]

§ 1956.118 Approval authority.

District Directors cannot approve debt settlement actions. Therefore, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. Subject to this subpart, the compromise, adjustment, cancellation, or chargeoff of debts will be approved or rejected:

(a) By the State Director when the outstanding balance of the indebtedness involved in the settlement is less than \$50,000, including principal, interest, and other charges.

(b) By the Administrator or his designee when the outstanding balance of the indebtedness involved in the settlement is \$50,000 or more, including principal, interest, and other charges.

§§ 1956.119–1956.123 [Reserved]

§ 1956.124 **Compromise and adjustment.**

Nonjudgment debts may be compromised or adjusted upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate.

(a) *General provisions.* Debts, regardless of the amount, may be compromised or adjusted subject to the following:

(1) The debt or any extension thereof on which compromise or adjustment is requested is due and payable under the terms of the note or other instrument, or because of acceleration by written notice, prior to the date of application for settlement.

(2) The period of time during which payments on adjustment offers are to be made cannot exceed five years without the approval of the Administrator.

(3) Efforts will be made to avoid applications for settlement in which debtors offer a specified amount payable upon notice of approval of the proposed settlement.

(b) *Debtor's ability to pay.* In evaluating the debtor's settlement application, it is essential that reliable information be obtained in sufficient detail to assure that the offer accurately reflects the debtor's ability to pay. The debtor's income, expenses, and non-security assets are critical factors in determining the type of settlement and the amount which the debtor can reasonably be expected to offer. Critical information should include the following:

(1) The debtor's total present income from all sources will be determined. In addition, careful consideration will be given to the probable sources, amount, and stability of income to be received over a reasonable period of years. For individuals, public welfare assistance and pensions, including old age pensions and pensions received by veterans for pensionable disabilities will not be considered as sources of funds with which to make compromise and adjustment offers.

(2) The debtor's operation and maintenance expenses, and, in the case of individuals, probable living expenses.

(3) The priority of payments on debts to third parties.

(4) When the debtor is largely dependent on income from an occupation in which manual labor is required, age and health of the individual are vital factors in determining the ability to pay. The number in the debtor's family, their ages and condition of health, will also be weighed in determining the ability to pay. However, when the debtor's income is from investments, business enterprises, or management efforts, age and health of both individual and family are of less importance.

(5) The value of the debtor's assets in relation to debts and liens of third parties is important in determining the debtor's ability to pay. It is recognized that debtors must retain a reasonable equity in essential nonsecurity property in order to continue normal operations and, in the case of an individual, to meet family living expenses over a period of years. Under this policy a reasonable equity in a modest nonsecurity homestead occupied by the debtor, whether or not exempt from levy and execution will not be considered as available for offer in settlement. Non-security property which is in excess of minimum business and/or family living needs and which is not exempt from levy and execution should be considered when determining the debtor's ability to pay.

(c) *Debtor unable to pay in full.* Debts may be compromised or adjusted and security property retained by the debtor, provided:

(1) The debtor is unable to pay the indebtedness in full, and

(2) The debtor has offered an amount equal to the present fair market value of all security or facility financed, and

(3) The debtor has offered any additional amount which the debtor is able to pay, and

(4) The total amount offered represents a reasonable determination of the debtor's ability to pay.

(d) *Debtor able to pay in full but refuses to do so.* If the debtor has the ability to pay in full but refuses to do so, debts may be compromised or adjusted and security property retained by the debtor under certain conditions:

(1) The OGC advises that the Government is unable to enforce collection in

full within a reasonable time by enforced collection proceedings, and the amount offered represents a reasonable settlement considering:

(i) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law, and

(ii) Inheritance prospects within 5 years, and

(iii) Likelihood of debtor obtaining nonexempt property or income within 5 years out of which there could be collected a substantially larger sum than the amount of the present offer, and

(iv) Uncertainty as to the price that the security or other property will bring at forced sale, *or*

(2) The OGC advises that there is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and the amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved, and

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors, and

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation, *or*

(3) When the cost of collecting the debt does not justify enforced collection of the full amount. In such cases, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigious costs of collection. Such discount will not exceed \$600 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§§ 1956.125–1956.129 [Reserved]

§ 1956.130 Cancellation.

Nonjudgment debts, regardless of the amount, may be cancelled with or without application by the debtor.

(a) *With application by debtor.* Debts may be cancelled upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate. The following conditions apply:

(1) The servicing official furnishes a favorable recommendation concerning the cancellation, and

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so, and

(4) The debt or any extension thereof is due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application.

(b) *Without application by debtor.* Debts may be cancelled upon a favorable recommendation of the servicing official in the following instances:

(1) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form FmHA or its successor agency under Public Law 103–354 1956–1 with a copy of the Bankruptcy Court's Discharge Order attached. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(2) *Impossible or impractical to obtain a debtor's signature.* Debts may be cancelled if it is impossible or impractical to obtain a signed application and the requirements of §1956.130(a) (1), (2), and (3) *only* of this subpart are met. Form FmHA or its successor agency under Public Law 103–354 1956–1 will document:

(i) The sources of information obtained.

(ii) That a current effort was made to obtain the debtor's application and the date of such effort.

(iii) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the

debtor refused to sign, the reason(s) given.

(3) *Deceased debtors (individuals only)*. The following conditions must exist:

(i) There is no known security,
 (ii) An administrator or executor has not been appointed to settle the debtor's estate but the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery, or

(iii) An administrator or executor has been appointed to settle the estate of the debtor, and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court, but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been effected but such assets have been disposed of or lost in a manner which the OGC advises will preclude any reasonable prospect of recovery by the Government.

(4) *Disappeared debtor (individuals only)*. The following conditions must exist:

(i) The debtor has disappeared and cannot be found without undue expense. Reasonable efforts either in person or in writing will be made to locate the debtor. These efforts, including the names and dates of contacts, and the information furnished by each person, will be fully documented on Form FmHA or its successor agency under Public Law 103-354 1956-1.

(ii) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(iii) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

§§ 1956.131-1956.135 [Reserved]

§ 1956.136 Chargeoff.

(a) *Judgment debts*. Subject to the provisions of § 1956.112(d) of this subpart, judgment debts, regardless of the

amount, may be charged off without the debtor's signature upon a favorable recommendation of the servicing official provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.130(b)(1), (2), (3), or (4) of this subpart have been met, as appropriate, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts*. Debts which cannot be settled under other sections of this subpart may be charged off without the debtor's signature upon a favorable recommendation of the servicing official in the following instances:

(1) When the OGC advises in writing that the claim is legally without merit, or that evidence necessary to prove the claim in court cannot be produced.

(2) When there is no known security for the debt, the debtor has no other assets from which the debt could be collected, and the debtor:

(i) Is unable to pay any party of the debt and has no reasonable prospect of being able to do so, or

(ii) Is able to pay part or all of the debt but refuses to do so, and an opinion is received from OGC to the effect that the Government cannot enforce collection of a significant amount from assets or income.

(3) When the debtor is deceased (individuals only), disappeared (individuals only), or when it is impossible or impractical to obtain the debtor's signature, and the conditions of § 1956.136(b)(2) of this subpart are met.

§ 1956.137 [Reserved]

§ 1956.138 Processing.

(a) *Approval*. When a debt settlement application is approved, the State Director will:

(1) Send the original approved Form FmHA or its successor agency under Public Law 103-354 1956-1 to the Finance Office.

(2) Notify debtors in writing of settlement approval, including the specific amount and terms of the offer that

were accepted, for compromise and adjustment offers under § 1956.124 and cancellations with application under § 1956.130(a) of this subpart.

(3) Not be required to notify debtors of settlement approval when debts are cancelled without application under § 1956.130(b) or charged off under § 1956.136 of this subpart.

(b) *Requesting additional information.* When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the State Director may request the servicing official to obtain the additional information or make an effort to obtain a more acceptable offer, as the circumstances justify. Notice of rejection of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer.

(c) *Rejection.* When a debt settlement application is rejected, the State Director will:

(1) Insert the reasons for rejection on the Form FmHA or its successor agency under Public Law 103-354 1956-1.

(2) Retain the original Form FmHA or its successor agency under Public Law 103-354 1956-1 in the State Office and return case files and copies of Form FmHA or its successor agency under Public Law 103-354 1956-1 to the servicing official.

(3) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the servicing official.

(4) Return any adjustment or compromise payment held by the State Office to the borrower, in care of the servicing official.

(5) Notify the debtor in writing of the reasons for the rejection for compromise and adjustment offers under § 1956.124 and cancellations with application under § 1956.130(a) of this subpart.

(d) *Appeal rights.* In accordance with Subpart B of Part 1900 of this chapter, the debtor will be given the right to appeal the rejection of any debt settlement offer made by the debtor under this subpart.

§ 1956.139 Collections.

(a) When the debtor offers a lump-sum payment in compromise or an initial payment on an adjustment offer, that payment will accompany the settlement application at the time the application is filed with the servicing official.

(b) [Reserved]

(c) Checks or check transmittal letters containing restrictive notations such as "Settlement in full" or "Payment in full," will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(d) All payments evidenced by Form FmHA or its successor agency under Public Law 103-354 451-2, "Schedule of Remittances," bearing the legend "Compromise Offer—FmHA or its successor agency under Public Law 103-354" or "Adjustment Offer—FmHA or its successor agency under Public Law 103-354," will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer.

(1) Upon receipt of an approved Form FmHA or its successor agency under Public Law 103-354 1956-1, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds, the Finance Office will prorate the amount received on the basis of the total principal balance due the respective revolving funds.

(2) Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the servicing official, the amount held in the Deposits Fund Account.

(e) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA or its successor agency under Public Law 103-354 1956-1 will be held in a suspense file

pending payment of the full amount of the approved offer.

(f) If an approved debt settlement agreement is later voided by the State Director in accordance with §1956.142(e) of this subpart, any payments which have been received shall be retained as payments on the debt owed at the time the compromise or adjustment offer was approved.

[53 FR 13100, Apr. 21, 1988, as amended at 68 FR 61332, Oct. 28, 2003]

§§ 1956.140–1956.141 [Reserved]

§ 1956.142 Delinquent adjustment agreements.

(a) The servicing official is responsible for notifying debtors in advance of the due dates of payments on debt settlement agreements and for monitoring compliance with the terms of settlement agreements. If a payment is delinquent, the servicing official should contact the debtor promptly to determine the reason for the delinquency and the debtor's plan for completing the agreement.

(b) Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the servicing official regarding further handling of the case.

(c) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee and the servicing official.

(d) When the debtor is financially unable to meet the terms of the debt settlement agreement, the State Director may void the existing agreement and process a new settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action.

(e) If the State Director determines that the debtor cannot or will not meet the terms of the settlement agreement and if the facts do not justify approval of a new settlement agreement, the State Director will void the existing agreement and direct the servicing official to take other servicing actions

appropriate to the circumstances of the case.

(f) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the servicing official. Upon receipt, the Finance Office will return the original Form FmHA or its successor agency under Public Law 103–354 1956–1 to the State Office.

§ 1956.143 Debt restructuring—hospitals and health care facilities.

This section pertains exclusively to delinquent Community Facility hospital and health care facility loans. Those facilities which are nonprogram (NP) loans as defined in §1951.203 (f) of subpart E of part 1951 of this chapter are excluded. The purpose of debt restructuring is to keep the hospital or health care facility in operation with manageable debt.

(a) *Definitions.* As used in this section, the following definitions apply:

Consolidation. The combining of two or more debt instruments into one instrument, normally accompanied by reamortization.

Debt writedown. A one-time reduction of the debt owed to FmHA or its successor agency under Public Law 103–354 including principal and interest. This reduction will be the minimum amount necessary to meet the level of the facility's ability to service the debt. The writedown will be applied first to interest and then principal.

Delinquency due to circumstances beyond the control of the debtor. Includes situations such as: The debtor has less money than planned due to unexpected and uncontrollable events such as unexpected loss of service area population, unforeseeable costs incurred for compliance with State or Federal regulatory requirements, or the loss of key personnel.

Delinquent debtor. For purposes of this section, delinquency is defined as being 180 days behind schedule on the FmHA or its successor agency under Public Law 103–354 payments. That is, one full annual installment or the equivalent for monthly, quarterly, or semiannual installments.

Eligibility. Applicants must be delinquent due to circumstances beyond

their control and have acted in good faith by trying to fulfill the agreements with FmHA or its successor agency under Public Law 103-354 in connection with the delinquent loans.

Interest rate reduction. Reduction of the interest rate on the restructured loan to as low as the poverty line interest rate in effect on community and business programs loans.

Loan deferral. The temporary delay of principal and interest payments for up to 6 months. The debtor must be able to demonstrate the ability to pay the debt, as restructured, at the end of this delay period.

Net recovery value. A calculation of the net value of the collateral and other assets held by the debtor. This value would be determined by adding the fair market value of FmHA or its successor agency under Public Law 103-354's interest in any real property pledged as collateral for the loan, plus the value of any other assets pledged or otherwise available for the repayment of the debt, minus the anticipated administrative and legal expenses that would be incurred in connection with the liquidation of the loan. This value of the assets should be calculated based upon the facility continuing to operate as a going concern. Therefore, the facility should be valued not merely as an empty building but as a facility continuing to offer health care services which may, or may not, be similar to those offered by the current operators.

Operations review. A study of management and business operations of the facility by an independent expert. For example, a study of a hospital and nursing home would include such areas as: general and administrative, dietary, housekeeping, laundry, nursing, physical plant, social services, income potential, Federal, State, and insurance payments, and rate analysis. Also, recommendations and conclusions are to be included in the study which would indicate the creditworthiness of the facility and its ability to continue as a going concern. In analyzing a debtor's proposed restructuring plan, FmHA or its successor agency under Public Law 103-354 may contract for the completion of an operations review. These reviews will be developed by individuals and entities who have demonstrated an

expertise in the analysis of health care facilities from an operational and administrative standpoint. FmHA or its successor agency under Public Law 103-354 will consider the following criteria for selection: past experience in health care facility analysis, a familiarity with the problems of rural health care facilities, a knowledge of the particular area currently served by the facility in question, and a willingness to work with both FmHA or its successor agency under Public Law 103-354 and the debtor in developing a final plan for restructuring.

Restructured loan. A revision of the debt instruments including any combination of the following: writing down of accumulated interest charges and principal, deferral, consolidation, and adjustment of the interest rates and terms, usually followed by reamortization.

(b) *Debtor notification.* All servicing actions permitted under subpart E of part 1951 of this chapter are to be exhausted prior to consideration for debt restructuring under this section. To this end, the servicing official must ensure that the casefile clearly documents that all servicing actions under subpart E of part 1951 of this chapter have been exhausted and that the debtor is at least 1 full year's debt service behind schedule for a minimum of 180 days. The debtor then should be informed of the debt restructuring available under this section by using language similar to that provided in Guide 1 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) as follows:

- (1) Any introductory paragraph;
- (2) A paragraph concerning prior servicing attempts;
- (3) A discussion of eligibility, as defined in this section, including the provision that the debtor acted in good faith in connection with their FmHA or its successor agency under Public Law 103-354 loan and that the delinquency was caused by circumstances beyond their control;
- (4) Two paragraphs that explain the goal of the debt restructuring program;
- (5) A paragraph stating that debt restructuring may include a combination of servicing actions listed in paragraph (a) of this section;

(6) Information that details what the debtor must do to apply for restructuring. A response must be received within 45 days of receipt of this letter to request consideration for debt restructuring and the request must include projected balance sheets, budgets, and cash-flow statements which include and clearly identify funding of the FmHA or its successor agency under Public Law 103-354 reserve account for the next 3 years;

(7) A discussion of FmHA or its successor agency under Public Law 103-354's analysis and calculation process; and

(8) A paragraph identifying the FmHA or its successor agency under Public Law 103-354 official who may be contacted for assistance.

(c) *State Director's restructuring determination.* Upon receipt of the delinquent debtor's request for debt restructuring consideration, the State Director will:

(1) Within 15 days of receipt of debtor's request, if an operations review is deemed necessary, send a memorandum to the Administrator asking for program authority to contract for the review in accordance with Exhibit D of FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 Office). The name of the debtor involved and the projected amount of funds anticipated to be spent for the contract should also be provided. It is anticipated that an operations review will be necessary in most cases and that the only exceptions would be for smaller health care facilities or facilities that have developed a proposed plan that is comprehensive and realistic. Upon receipt of the Administrator's program contracting approval authority, a contract is to be awarded to an organization qualified to perform an operations review as defined in paragraph (a) of this section. The operations review normally will be completed and delivered to FmHA or its successor agency under Public Law 103-354 within 60 days of the award date.

(2) Contract for an appraisal to be performed by an independent, qualified fee appraiser. Note: To the extent possible, the appraisal should be scheduled

for completion no later than the completion date of the operations review.

(3) Complete an analysis of the operations review, appraisal, and other documented information, and make an eligibility determination.

(i) Eligibility determination. The State Director must conclude that the debtor is eligible for debt restructuring consideration. This conclusion will be clearly documented in the casefile based on a review of the following:

(A) The debtor acted in good faith with regard to the delinquent loan. The casefile must reflect the debtor's cooperation in exploring servicing alternatives. The casefile should contain no evidence of fraud, waste, or conversion by the debtor, and no evidence that the debtor violated the loan agreement or FmHA or its successor agency under Public Law 103-354 regulations.

(B) The delinquency was caused by circumstances beyond the control of the debtor. This determination will be based on the debtor's narrative on this issue, which is a required part of the application for debt restructuring, and a separate review of the debtor's casefile and operations.

(C) As part of the application for debt restructuring, the debtor submitted a proposed operating plan that presents feasible alternatives for addressing the delinquency.

(ii) *Debtor determined eligible.* If the debtor is determined to be eligible for debt restructuring, a determination of a net recovery value and level of debt the facility will support will be made. It is anticipated that meetings with the debtor, the contractor who performed the operations review, and others, as appropriate, could be necessary to develop these values; although it should be emphasized throughout these meetings that any calculations and conclusions reached are preliminary in nature, pending final review by the Administrator. For debt restructuring calculations and computing a feasible cash-flow projection, the following order and combinations of loan servicing actions will be followed:

(A) Loan deferral for up to 6 months.

(B) Interest rate reduction to not less than the poverty line rate as determined by FmHA or its successor agency under Public Law 103-354 Instruction 440.1, exhibit B (available in any FmHA or its successor agency under Public Law 103-354 Office). Interest rate reduction will be considered only in conjunction with an extension of the term of the loan to the remaining useful life of the facility or 40 years, whichever is less.

(C) Debt writedown. Other creditors of the debtor, representing a substantial portion of the total debt, are expected to participate in the development of a restructuring plan which includes debt writedown. Debt writedown participation by other creditors should be on a pro rata basis with the FmHA or its successor agency under Public Law 103-354 writedown. However, failure of these creditors to agree to participate in the plan shall not preclude the use of principal and interest writedown by FmHA or its successor agency under Public Law 103-354 if it is determined that this option results in the least cost to the Federal Government.

(iii) *Debtor determined ineligible.* If the State Director concludes that the debtor is not eligible for debt restructuring consideration for any of the reasons listed in paragraph (c)(3)(i) of this section, then the debtor will be notified by a letter that includes the following information:

(A) The basis for the determination;

(B) The next step in servicing the loan: possible acceleration if the delinquency is not cured; and

(C) The debtor may appeal this determination in accordance with subpart B of part 1900 of this chapter.

(iv) *State Director's recommendation.* Upon completion of the determination of net recovery value and restructured debt in accordance with paragraph (c)(3)(ii) of this section, and prior to formal presentation to the borrower, the State Director will forward a recommendation to the National Office with the following documentation:

(A) That all other servicing efforts have been exhausted as required in paragraph (b) of this section.

(B) Financial statements including balance sheets, income and expense,

cash-flows for the most recent actual year, and projections for the next 3 years. The amount of FmHA or its successor agency under Public Law 103-354's restructured debt and reserve account requirements are to be clearly indicated on the projected statements. Also, operating statistics including number of beds, patient days of care, outpatient visits, occupancy percentage, etc., for the same periods of time must be included.

(C) Copies of the operations review, developed for the particular loan, and appraisal.

(D) Calculations of the net recovery value. (E) Debt restructuring calculations including a listing of the various servicing combinations used in these calculations as contained in paragraph (c)(3)(ii) of this section. For example:

(1) Interest rate reduced from the applicant's current rate on all loans to the poverty line rate as determined by FmHA or its successor agency under Public Law 103-354 instruction 440.1, exhibit B (available in any FmHA or its successor agency under Public Law 103-354 Office); and

(2) Extension of the terms from 25 to 30 years.

(F) Information concerning discussions with the debtor and their agreement or disagreement with the calculations and recommendations.

(G) If debt restructuring is proposed:

(1) A draft of Form RD 3560-15, if applicable, and any other necessary comments or requirements that may be required by OGC and Bond Counsel in § 1951.223 (c)(3) and (4) of subpart E of part 1951 of this chapter.

(2) A draft of Form FmHA or its successor agency under Public Law 103-354 1956-1, if applicable. Complete only parts I, II, VI, and VIII. Part VI, "Debtor's Offer and Certification," will be in a separate attachment and contain the adjusted unpaid principal amount for which FmHA or its successor agency under Public Law 103-354 approval is requested. In Part VI of the form, type "see attached."

(H) If the proposed restructured debt will not cash-flow or is less than the net recovery value, omit the items in paragraph (c)(3)(iv)(G) of this section.

(d) *National Office processing of State Director's request.* (1) After reviewing

the recommendation to either debt restructure or liquidate for the net recovery value, the Administrator, after concurring, modifying, or not concurring in the recommendation, will return the submission for further processing.

(2) If a debt writedown is used in the restructuring process, the amount will be included in the National Office transmittal memorandum. The draft Form FmHA or its successor agency under Public Law 103-354 1956-1 will not need to be finalized and returned to the Administrator for signature. The State Director's signature on the final copy will be sufficient. However, a copy of the National Office memorandum is to be attached to the form when completed.

(e) *Debtor notification of debt restructuring and net recovery value calculations.* The State Director will provide a copy of the basis for the debt restructuring or net recovery determination to the debtor.

(1) If the value of the restructured loan is equal to, or greater than, the recovery value, the debtor will be made an offer to accept the restructured debt by using language similar to that provided in Guide 2 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) and including the following paragraphs:

(i) An introductory paragraph indicating that FmHA or its successor agency under Public Law 103-354 has concluded its consideration of the debtor's request;

(ii) A paragraph indicating FmHA or its successor agency under Public Law 103-354's approval of the debt restructuring request and that acceptance must be received by FmHA or its successor agency under Public Law 103-354 within 45 days from receipt of this letter; and

(iii) That the debtor's acceptance will require the execution of a Shared Appreciation Agreement similar to Guide 4 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) and possible new debt instruments accompanied by Bond Counsel opinions.

(2) If the debt analysis calculations indicate that a restructured debt would

be less than the net recovery value of the security, a letter using language similar to that provided in Guide 3 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office), will be sent to the debtor that includes the following paragraphs:

(i) An introductory paragraph indicating that FmHA or its successor agency under Public Law 103-354 has concluded its consideration of the debtor's request;

(ii) Paragraphs indicating that:

(A) The debtor may pay FmHA or its successor agency under Public Law 103-354 the net recovery value of the loan. The debtor will be given 30 days from receipt of this letter to inform FmHA or its successor agency under Public Law 103-354 of its intent, 90 days to finalize the payoff, and will be notified that an election to pay off FmHA or its successor agency under Public Law 103-354 would require the execution of a Net Recovery Buy Out Recapture Agreement, similar to that provided in Guide 5 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office); or

(B) If the debt is not paid off at the net recovery value, FmHA or its successor agency under Public Law 103-354 will proceed to liquidate the loan.

(f) *Debtor responses to debt restructuring and net recovery value calculations.* Responses from the debtor will be handled as follows:

(1) *Acceptance of FmHA or its successor agency under Public Law 103-354's restructured debt offer.* When a debtor accepts the offer for debt restructuring, processing will be in accordance with §1951.223 (c) of subpart E of part 1951 of this chapter using the adjusted unpaid principal and outstanding accrued interest at the Administrator's approved interest rate and terms. The debtor will be required to execute a Shared Appreciation Agreement which will provide that, should the debtor sell or transfer title to the facility within the next 10 years, FmHA or its successor agency under Public Law 103-354 is entitled to a portion of any gain realized. This agreement will include language similar to that found in Guide 4 of this subpart (available in any FmHA or its successor agency under Public Law 103-

354 Office). The original of Form FmHA or its successor agency under Public Law 103–354 1956–1, with appropriate attachments signed by the State Director, and a copy of the Shared Appreciation Agreement will be sent to the Finance Office. Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package; and

(2) *Acceptance by debtor to pay off loan at the recovery value.* Processing of this transaction will be in accordance with § 1956.124 of this subpart. However, the account does not need to be accelerated. The debtor will be required to execute a Net Recovery Buy Out Recapture Agreement, similar to that found in Guide 5 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office). The original of Form FmHA or its successor agency under Public Law 103–354 1956–1, with appropriate attachments signed by the State Director, and a copy of the recorded Net Recovery Buy Out Recapture Agreement will be sent to the Finance Office. The executed Net Recovery Buy Out Recapture Agreement will be recorded in the county in which the facility is located. The Finance Office will credit the accounts of debtors who entered into Net Recovery Buy Out Recapture Agreements with the amount paid by the debtor (net recovery value). Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package.

(g) *Collection and processing of recapture.* (1) When FmHA or its successor agency under Public Law 103–354 becomes aware of the sale or transfer of title to the facility on which there is an effective Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office) or a Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office) outstanding and a determination is made that a recapture is appropriate, FmHA or its successor agency under Public Law 103–354 will notify the debtor of the following:

(i) Date and amount of recapture due; and

(ii) FmHA or its successor agency under Public Law 103–354 action to be taken if debtor does not respond within the designated timeframe with the amount of recapture due.

(2) [Reserved]

(3) When the amount of the recapture has been paid and credited to the debtor's account, the debtor will be released from liability by using Form FmHA or its successor agency under Public Law 103–354 1965–8, “Release from Personal Liability,” modified as appropriate.

(h) *No recapture due.* If FmHA or its successor agency under Public Law 103–354 determines there is no recapture due, the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office) will be appropriately annotated, the Recapture Agreement released from the record, and the Agreement returned to the debtor.

[59 FR 46160, Sept. 7, 1994, as amended at 68 FR 61332, Oct. 28, 2003; 69 FR 69106, Nov. 26, 2004]

§ 1956.144 [Reserved]

§ 1956.145 Disposition of essential FmHA or its successor agency under Public Law 103–354 records.

FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office) identifies an “essential FmHA or its successor agency under Public Law 103–354 record” as the original of any document or record which provides evidence of indebtedness or obligation to FmHA or its successor agency under Public Law 103–354 and includes, but is not limited to: promissory notes, assumption agreements and valuable documents, such as bonds fully registered as to principal and interest.

(a) Essential FmHA or its successor agency under Public Law 103–354 records evidencing debts settled by compromise, completed adjustment or cancelled with application will be returned to the debtor or to the debtors’

legal representative. The appropriate legend, such as "Satisfied by Approved Compromise," and the date of the final action will be stamped or typed on the original document. This same information plus the date the original document is returned to the debtor will be shown on a copy to be placed in the debtor's case folder.

(b) Essential FmHA or its successor agency under Public Law 103-354 records evidencing debts cancelled without application will be placed in the debtor's case folder and disposed of pursuant to FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office). However, if the debtor requests the document(s), they must be stamped "Satisfied by Approved Cancellation" and returned.

(c) Essential FmHA or its successor agency under Public Law 103-354 records evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after chargeoff pursuant to FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office).

[53 FR 13100, Apr. 21, 1988, as amended at 58 FR 21346, Apr. 21, 1993]

§ 1956.146 [Reserved]

§ 1956.147 Debt settlement under the Federal Claims Collection Act.

The U.S. Department of Justice (DOJ) and the General Accounting Office are charged with the responsibility for implementing the Federal Claims Collection Act and have promulgated the Federal Claims Collection Act Joint Standards (FCCAJS) (4 CFR parts 101-105) to inform Government Agencies on how to settle debts and claims which the Agency does not have independent statutory authority to settle. With the exception of loans and claims with outstanding balances of \$20,000 or less, exclusive of interest, penalties, and administrative costs, settlements must be submitted to and approved by the United States Attorney or the DOJ. Debt Settlement of

Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Nonprogram loans, Industrial Development Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporations Loans and Grants, Indian Tribal Land Acquisition Loans (to the extent settlement cannot be effected pursuant to §1956.137), and 601 Energy Impact Assistance Grants are programs that must be settled under the FCCAJS.

(a) Debt settlement of the subject loans and claims falls in the following categories:

(1) Settlement of loans and claims may be approved by the Administrator when the outstanding balance of the indebtedness involved in the settlement in \$20,000 or less, exclusive of interest, penalties, and administrative costs. These loans and claims will be submitted to the National Office on Form FmHA or its successor agency under Public Law 103-354 1956-1, "Application for Settlement of Indebtedness," for debt settlement. Subsequent to approval, Form FmHA or its successor agency under Public Law 103-354 1956-1 will be distributed in accordance with the Forms Manual Insert (FMI).

(2) Loans and claims with an outstanding balance of \$200,000 or less inclusive of interest, penalties, and administrative costs, but with an outstanding balance greater than \$20,000, exclusive of interest, penalties, and administrative costs, after approval by the State Director will be referred to your Regional Office of the General Counsel (OGC) for referral to the United States Attorney in whose judicial district the debtor can be found. The form to be used is the Claims Collection Litigation Report (CCLR). This form should be available through the U.S. Attorney. A memorandum from the State Director should be attached to the CCLR recommending acceptance of the debt settlement. If the State Director after reviewing the CCLR does not recommend acceptance, the State Director has the authority to reject the debt settlement.

(3) Loans and claims with an outstanding balance over \$200,000, inclusive of interest, penalties, and administrative costs, will be referred to the

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Administrator and will include the following:

- (i) The case file(s).
- (ii) A completed CCLR.
- (iii) Copies of the notes, security agreements, and mortgages.
- (iv) A current appraisal of any security owned by the debtor.
- (v) A narrative which will include:
 - (A) Recommendation for the acceptance of the debt settlement.
 - (B) The type of loan involved, a short history of the loan, and why the debtor failed.
 - (C) Steps taken to collect the loan(s).
 - (D) An analysis of the debtor's future repayment ability. This should discuss if the debtor has any other assets or has concealed or improperly transferred assets, if known. If the debtor is an individual, this should include consideration of the debtor's present and potential income and inheritance prospects.
 - (E) Why acceptance of the debt settlement offer is in the best interest of the Government.
- (4) If the Administrator concurs with the recommendation for the debt settlement, it will be referred by the FmHA or its successor agency under Public Law 103-354 National Office to OGC for referral to the Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.
- (b) When a debtor has a Community Programs or Business and Industry loans(s) and defined in this subpart, these loan(s) will be debt settled under the authority of the Consolidated Farm and Rural Development Act. In such cases, the subject loans and claims should be listed under part II(B) on Form FmHA or its successor agency under Public Law 103-354 1956-1, as other debts owed FmHA or its successor agency under Public Law 103-354. Normally, all the security for the subject loans and claims should be disposed of prior to the submission for debt settlement.
- (c) It is not necessary to obtain approval of the United States Attorney or the DOJ (as the case may be) in cases where FmHA or its successor

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agency under Public Law 103-354 decides not to settle a loan or claim.

[55 FR 30197, July 25, 1990, as amended at 59 FR 46162, Sept. 7, 1994]

§ 1956.148 Exception authority.

The Administrator may make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA or its successor agency under Public Law 103-354 1956-1 and returned to the State Office for submission to the Finance Office.

§ 1956.149 [Reserved]

§ 1956.150 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0124. Public reporting burden for this collection of information is estimated to vary from ½ hour to 30 hours per response with an average of 8.14 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[59 FR 46162, Sept. 7, 1994]